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*Attorneys for BNSF Railway Company*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION**

BNSF RAILWAY COMPANY, on  
behalf of THE UNITED STATES OF  
AMERICA

Plaintiff,  
vs.

THE CENTER FOR ASBESTOS  
RELATED DISEASE, INC.,

Defendant.

Civil Action No.: CV-19-40-M-DLC

**RELATOR'S PROPOSED  
SUPPLEMENTAL JURY  
INSTRUCTIONS**

Relator, BNSF Railway Company, through counsel, hereby submits Relator's Proposed Supplemental Jury Instructions 20-21.

DATED this 16th day of June, 2023.

KNIGHT NICASTRO MACKAY, LLC

*/s/ W. Adam Duerk*  
Attorneys for BNSF Railway Company

**CERTIFICATE OF SERVICE**

I certify on this 16th day of June, 2023, a copy of the foregoing document was served upon the following persons by the following means:

- 1-3 CM/ECF
- \_\_\_\_\_ Mail
- \_\_\_\_\_ Hand Delivery
- \_\_\_\_\_ Overnight Delivery Service
- \_\_\_\_\_ Fax
- \_\_\_\_\_ Email

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## KNIGHT NICASTRO MACKAY, LLC

By: /s/ W. Adam Duerk  
W. Adam Duerk  
Attorneys for BNSF Railway Company

INSTRUCTION NO. \_\_\_\_\_

An individual is “diagnosed” with a qualifying condition only if the patient’s physician determines that condition was caused by asbestos exposure according to the standards of care for the diagnosis of asbestos-related disease.

“Diagnosis Defined”

42 U.S.C. § 1395rr-1

Black’s Law Dictionary defines “diagnosis” as “[t]he determination of a medical condition (such as a disease) by physical examination or by study of its symptoms.”

Diagnosis, Black’s Law Dictionary (11th ed. 2019).

Merriam Webster’s Dictionary defines “diagnosis” as:

1. a: the art or act of identifying a disease from its signs and symptoms  
b: the decision reached by diagnosis.
2. a: investigation or analysis of the cause or nature of a condition, situation, or problem.  
b: a statement or conclusion from such an analysis.

Diagnosis, Merriam-Webster's Dictionary, [www.merriam-webster.com/dictionary/diagnosis](http://www.merriam-webster.com/dictionary/diagnosis).

The Britannica Dictionary defines “diagnosis” as:

**1** : the act of identifying a disease, illness, or problem by examining someone or something.

**2** : a statement or conclusion that describes the reason for a disease, illness, or problem.

Diagnosis, The Britannica Dictionary,  
<https://www.britannica.com/dictionary/diagnosis>

Dictionary.com defines “diagnosis” as:

1. *Medicine/Medical*.
  - a. the process of determining by examination the nature and circumstances of a diseased condition.

b. the decision reached from such an examination.  
Diagnosis, Dictionary.com, <https://www.dictionary.com/browse/diagnosis>.

The Attorney's Dictionary of Medicine defines "Diagnosis" as "The determination of what kind of disease a patient is suffering from, especially the art of distinguishing between several possibilities."

Diagnosis, Attorneys' Dictionary of Medicine, J.E. Schmidt Vol. 2, p. 390 (LexisNexis 2022).

#### RELATOR'S PROPOSED INSTRUCTION NO. 20

INSTRUCTION NO. \_\_\_\_\_

To qualify an individual as an Environmental Exposure Affected Individual, a diagnosis of asbestosis, pleural thickening, or pleural plaques must include, at a minimum, medical evidence of signs of a structural abnormality in the lung consistent with an asbestos-related disease as established by:

- (1) interpretation of a plain chest x-ray by a “B Reader” qualified physician; or
- (2) interpretation of a computed tomographic radiograph of the chest by a qualified physician.

However, the other requirements for a diagnosis must also be met, including:

- (A) evidence of exposure to asbestos, and
- (B) exclusion of other plausible conditions.

An abnormality noted on a chest x-ray by a “B Reader” qualified physician or on a computed tomographic radiograph of the chest by a qualified physician is not a diagnosis by itself.

“Minimum Medical Evidence Required to Establish Diagnosis”  
(Modifies Relator’s Proposed Instruction No. 9)

42 U.S.C. § 1395rr-1(e)(2)(B)

Final Pretrial Order (Doc 169), “Agreed Facts,” Nos. ¶¶ 23–24, 49–50.

CARD’s Statement of Disputed Facts (Doc. 99), Response to Relator’s Statement of Undisputed Facts, ¶¶ 32–34, 38–43, 46, 48–51.

RELATOR’S PROPOSED INSTRUCTION NO. 21 (Alternative to Relator’s Proposed Instruction No. 9)

**CLEAN COPIES**

INSTRUCTION NO. \_\_\_\_\_

An individual is “diagnosed” with a qualifying condition only if the patient’s physician determines that condition was caused by asbestos exposure according to the standards of care for the diagnosis of asbestos-related disease.

INSTRUCTION NO. \_\_\_\_\_

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